

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85892299
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION (no change)	
ARGUMENT(S)	
<p>REQUEST FOR RECONSIDERATION</p> <p>ARGUMENT(S)</p> <p>In response to the substantive refusal(s), please note the following:</p> <p>I. INTRODUCTION</p> <p>Examiner has issued a final office action on November 19, 2013 with regards to the cited registration for SOUTH BEACH FOOD AND WINE FESTIVAL. For the reasons stated below, applicant respectfully disagrees and restates that Applicant's mark is not likely to be confused with the cited registration.</p> <p>II. COMMERCIAL IMPRESSION OF A NEIGHBORHOOD IN THE CITY OF MIAMI BEACH, FLORIDA</p> <p>The Examiner has stated that both marks have the overall commercial impression of a neighborhood in the city of Miami Beach, Florida, United States and has attached excerpts from Wikipedia in the prior office action. We disagree. The cited registration is associated with a nationally known event, widely publicized and that takes place in South Beach, Florida, and no other place. The Examiner is assuming that Applicant's mark is associated with South Beach, Florida without taking into consideration that there are other SOUTH BEACHES in the United States and in the world. SOUTH BEACH could be associated with any beach that is located geographically in the south of any region. Below are several links of places that carry SOUTH BEACH that are not in Miami Beach Florida, which are also attached for your ease of reference.</p>	

http://www.oregonstateparks.org/index.cfm?do=parkPage.dsp_parkPage&parkId=149

http://www.southbeachyc.org/content.aspx?page_id=22&club_id=739623&module_id=62256

<http://www.southbeachvb.com/>

The examiner had previously objected to the instant mark because of the mark's primarily geographically descriptiveness which was obviated by Applicant's substantial exclusive and continuous use in commerce. It is therefore clear at this point that SOUTH BEACH is a geographic region that does not necessarily need to be associated with a specific SOUTH BEACH and therefore its use should not be exclusive to anyone. "SOUTH BEACH" in SOUTH BEACH FOOD AND WINE FESTIVAL is geographically descriptive of the services this trademark is registered for and even with a claim of distinctiveness should not be allowed to exclusive use of this wording pursuant to Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2); and TMEP §§1210, 1210.01(a).

II. EVIDENCE OF DILUTED TERM SOUTH BEACH DOES NOT ESTABLISH THAT THE CITED REGISTERED MARKS ARE IN ACTUAL USE

Applicant agrees that evidence of weakness or dilution consisting solely of third-party registrations, such as those submitted by applicant in this case, is generally entitled to little weight in determining the strength of a mark, when such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing them. However, some of the registrations applicant has cited as evidence are actually used in the marketplace. For example, CLEVELANDER SOUTH BEACH shirts are sold on ebay as shown attached. Applicant also hereby submits evidence that SOUTH BEACH like LAGUNA BEACH are commonly used names that should not be allowed to exclusive use by one single person or entity. LAGUNA BEACH FILM FESTIVAL, Reg. 2499862 in class 25 (currently cancelled for failure to file a Section 8 Declaration) coexisted with LAGUNA BEACH JEAN CO., Reg. 3995320 also in class 25. Both of these registrations shared the main component LAGUNA BEACH and had a disclaimer for "JEAN CO." and "FILM FESTIVAL", therefore remaining just with LAGUNA BEACH as the dominant portion of the mark, and these coexisted for years.

III. CITED REGISTRATIONS ARE UNRESTRICTED AS TO CHANNELS OF TRADE

Recently, the Board reversed a refusal to register the mark **BENTLEY** for perfume, cosmetics, and glassware "sold only in authorized vehicle dealers and authorized vehicle service outlets," finding the mark not likely to cause confusion with the marks **BENTLEY**, **BENTLEY UNIVERSITY**, and

BENTLEY ORGANIC for similar or identical goods. Applicant Bentley Motors successfully argued that, because its goods are sold only through the "very tightly-knit" Bentley circle of dealers and service outlets, to a "niche, affluent clientele," confusion is unlikely. *In re Bentley Motors Ltd.*, Serial No. 85325994 (December 3, 2013). In the present case, The Examining Attorney argued that, since the cited registrations are unrestricted as to channels of trade, the goods are presumed to travel in all normal channels of trade. However, The Examiner has failed to show any evidence that the ordinary channels of trade for registrant's goods include private sector stores.

Applicant's goods are sold only in limited retail settings. The record does not support the proposition that the goods identified in the cited registrations normally move in the same limited retail settings as registrant's goods. The burden is on the Office to show that the ordinary trade channels for registrants' goods overlap with applicant's very limited trade channel.

IV. CONCLUSION

Applicant submits that his mark is not likely to cause confusion with the cited registration by Examiner. Applicant respectfully submits that, when viewing Applicant's Mark as a whole, the mark cannot be held to be likely to be confused with the cited registration after a close review of Applicant's goods, channels of distribution and mark image. Applicant has also included herewith a proposed amendment to the current description of goods of services, restricting the description so as to alleviate the examiner's concerns. Applicant believes that Applicant has fully responded to all points raised by the Examining Attorney in the November 19, 2013 Office Action, and that the application is now in condition for publication. Applicant respectfully requests favorable action be taken.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0005.JPG
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CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0006.JPG

ORIGINAL PDF FILE	evi_50128249120-121138649_.77680009.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0007.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\858\922\85892299\xml14\RFR0008.JPG
DESCRIPTION OF EVIDENCE FILE	different websites as evidence.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	025
DESCRIPTION	Swimsuits; Swimwear
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/11/1994
FIRST USE IN COMMERCE DATE	At least as early as 05/11/1994
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	025
TRACKED TEXT DESCRIPTION	
Swimsuits; Swimwear ; Swimwear excluding T-shirts, polo shirts, tank tops, hats, visors, aprons	
FINAL DESCRIPTION	
Swimsuits; Swimwear excluding T-shirts, polo shirts, tank tops, hats, visors, aprons	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/11/1994
FIRST USE IN COMMERCE DATE	At least as early as 05/11/1994
SIGNATURE SECTION	
RESPONSE SIGNATURE	/see/
SIGNATORY'S NAME	Steven E. Eisenberg
SIGNATORY'S POSITION	Attorney of record, Florida bar member
SIGNATORY'S PHONE NUMBER	(786) 431-2328
DATE SIGNED	05/15/2014

AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu May 15 12:23:36 EDT 2014
TEAS STAMP	USPTO/RFR-50.128.249.120- 20140515122336459572-8589 2299-500408779d88721766c8 aba1310b7fea167dcaff613ee a3c6ef4e50778a3891ff91-N/ A-N/A-2014051512113864936 1

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 05/31/2014)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85892299** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

REQUEST FOR RECONSIDERATION

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

I. INTRODUCTION

Examiner has issued a final office action on November 19, 2013 with regards to the cited registration for SOUTH BEACH FOOD AND WINE FESTIVAL. For the reasons stated below, applicant respectfully disagrees and restates that Applicant's mark is not likely to be confused with the cited registration.

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the city of Miami Beach, Florida, United States and has attached excerpts from Wikipedia in the prior office action. We disagree. The cited registration is associated with a nationally known event, widely publicized and that takes place in South Beach, Florida, and no other place. The Examiner is assuming that Applicant's mark is associated with South Beach, Florida without taking into consideration that there are other SOUTH BEACHES in the United States and in the world. SOUTH BEACH could be associated with any beach that is located geographically in the south of any region. Below are several links of places that carry SOUTH BEACH that are not in Miami Beach Florida, which are also attached for your ease of reference.

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EVIDENCE

Evidence in the nature of different websites as evidence. has been attached.

JPG file(s):

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_50128249120-121138649_.76008766.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

Original PDF file:

[evi_50128249120-121138649_.77680009.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Swimsuits; Swimwear

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 05/11/1994 and first used in commerce at least as early as 05/11/1994, and is now in use in such commerce.

Proposed:

Tracked Text Description: Swimsuits; ~~Swimwear~~; [Swimwear excluding T-shirts, polo shirts, tank tops, hats, visors, aprons](#)

Class 025 for Swimsuits; Swimwear excluding T-shirts, polo shirts, tank tops, hats, visors, aprons

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 05/11/1994 and first used in commerce at least as early as 05/11/1994, and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /see/ Date: 05/15/2014

Signatory's Name: Steven E. Eisenberg

Signatory's Position: Attorney of record, Florida bar member

Signatory's Phone Number: (786) 431-2328

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in

this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85892299

Internet Transmission Date: Thu May 15 12:23:36 EDT 2014

TEAS Stamp: USPTO/RFR-50.128.249.120-201405151223364

59572-85892299-500408779d88721766c8aba13

10b7fea167dcaff613eea3c6ef4e50778a3891ff

91-N/A-N/A-20140515121138649361



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 [Unisex Adult Clothing](#) >
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Cleveland SOUTH BEACH, Miami Tshirts 2 Black 1 White All XL Used

Condition: Pre-owned

Add to watch list

US \$19.99

Buy It Now

Add to cart

Add to watch list
 Add to collection

New customers get \$10 back on 1st purchase
 Subject to credit approval. [See terms](#)

Shipping: \$5.99 Standard Shipping | [See details](#)
 Item location: Brookline, Illinois, United States
 Ships to: United States and many other countries | [See details](#)

Delivery: Estimated between Wed. Apr. 30 and Tue. May. 6

Payments: [PayPal](#), [Bill Me Later](#) | [See details](#)

Seller information

lindah2727 (445)

99.7% Positive feedback

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AdChoice 20






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http://www.oregonstateparks.org/index...Trademark Sta...USPTO TSDR C...Request for Re...Manuals, Gui d...TMEPOregon Sta...x


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Nature
HISTORY
Discovery



**visit**


**things to do**


**get involved**

**about us**

South Beach State Park








**Reserve Online**
or by phone
M-F 8a-5p
800.452.5-687



Usual Season
Camping: Year Round
Day Use: Year Round

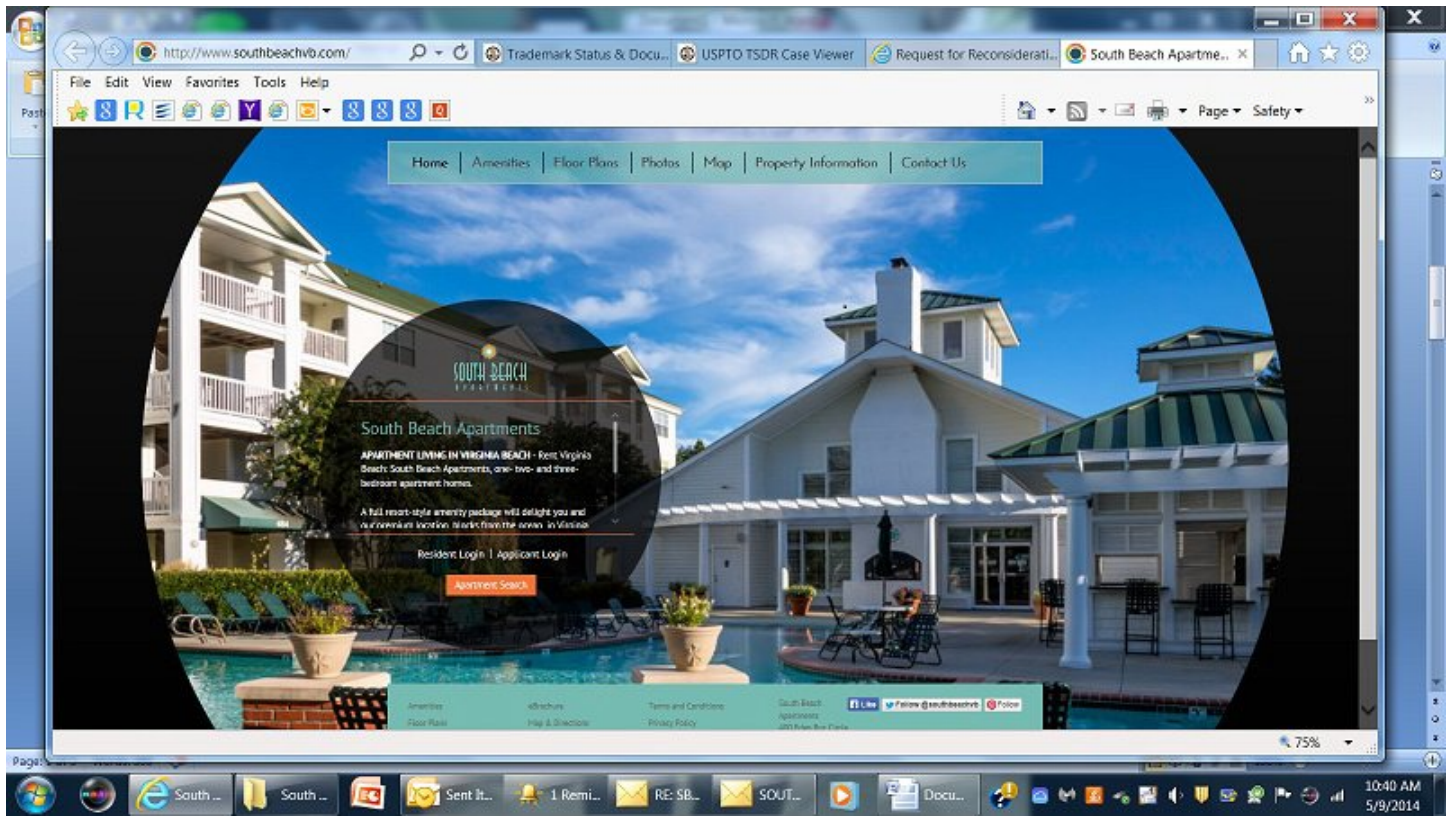
Park Info
Rates
History/FAQ
Events





Symbols represent major park features & activities. Blue icons mean some/all are ADA accessible.

100%



South Beach Yacht Club

Founded 1988

Member Login

- Home
- About SBYC
- Meeting SBYC
- Calendar
- Contact Us
- On the Water
- Racing
- Wave Length
- Media: In the News

[SB ZONE](#)
[SB Bay Sailing Schedule](#)
[SB Bay Links](#)
[Locate SBYC](#)

Hours and Location

[View GMA On The Embarcadero, San Francisco](#)
[See Contact Page](#) for mailing address

CLUB HOURS
 Fri: 1800 - 2200
 Sat: 1200 - 2000
 Sun: 1400 - 2000

37° 40' 47.31" N — 122° 23' 15.2" W
 (37.7127, -122.3879) [Map \(Google Location\)](#)

The [Green Arrow](#) marks the South Beach Yacht Club - 2nd floor, south end, Harbor Services Building.

*A1 marks the entrance to Harbor parking - this is for South Beach Marina tenants only or guests/crew with a parking permit.

The public parking lot and Pier 49 are at the top of this image, where Townsend starts as King Street. There is some visitor parking here as well as guest/crew permit parking.

View SBYC in an active [Google map](#).

Int. Cls.: 16, 25 and 41

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 39, 50, 100, 101
and 107**

United States Patent and Trademark Office

Reg. No. 2,499,862

Registered Oct. 23, 2001

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

LAGUNA BEACH FILM FESTIVAL

EXCHANGE CLUB OF LAGUNA BEACH (CALI-
FORNIA NOT-FOR-PROFIT ASSOCIATION)
570 GLENNERYE STREET
LAGUNA BEACH, CA 92651

FOR: PRINTED MATERIALS AND PUBLICA-
TIONS, NAMELY, POSTERS AND CATALOGS
FOR FILM FESTIVALS, IN CLASS 16 (U.S. CLS. 2,
5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 3-0-1996; IN COMMERCE 3-0-1996.

FOR: MEN'S, WOMEN'S AND CHILDREN'S
CLOTHING, NAMELY, T-SHIRTS, IN CLASS 25
(U.S. CLS. 22 AND 39).

FIRST USE 3-0-1996; IN COMMERCE 3-0-1996.

FOR: ENTERTAINMENT AND PRODUCTION
SERVICES, NAMELY SEMINARS DEALING WITH
FILM AND ENTERTAINMENT IN THE NATURE
OF A FILM FESTIVAL, IN CLASS 41 (U.S. CLS. 100,
101 AND 107).

FIRST USE 3-1-1997; IN COMMERCE 3-1-1997.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "FILM FESTIVAL", APART FROM
THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 76-008,766, FILED 3-24-2000.

EDD VASQUEZ, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

LAGUNA BEACH
Jean Co.

Reg. No. 3,995,320

Registered July 12, 2011

Int. Cl.: 25

TRADEMARK

SUPPLEMENTAL REGISTER

KIM, STEVE (UNITED STATES INDIVIDUAL)
663 EAST 22ND STREET
LOS ANGELES, CA 90011

FOR: DESIGNER LUXURY BELTS, DESIGNER LUXURY CAPS, DESIGNER LUXURY DENIMS, DESIGNER LUXURY HATS, DESIGNER LUXURY JEANS, DESIGNER LUXURY LEATHER BELTS, DESIGNER LUXURY SHIRTS, DESIGNER LUXURY SHOES, DESIGNER LUXURY SHORTS, DESIGNER LUXURY SKIRTS, DESIGNER LUXURY SWEAT SHIRTS, DESIGNER LUXURY TANK-TOPS, DESIGNER LUXURY TOPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-15-2007; IN COMMERCE 3-15-2007.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "JEAN CO.", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE NAME "LAGUNA BEACH JEAN CO." WRITTEN IN A STYLIZED FONT.

THE ENGLISH TRANSLATION OF LAGUNA IN THE MARK IS "LAGOON".

SER. NO. 77-680,009, FILED P.R. 2-27-2009; AM. S.R. 10-15-2009.

MICHELE SWAIN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.